

**PROPOSITION 68 GROUNDWATER -
DRINKING WATER TREATMENT OPERATIONS AND MAINTENANCE
FUNDING PROGRAM GUIDELINES**



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1. PURPOSE AND OVERVIEW

The California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (commonly referred to as Proposition 68), Chapter 11.1, allocates \$80 million for grants for treatment and remediation activities that prevent or reduce the contamination of groundwater that serves as a source of drinking water. After accounting for administrative and bond costs, approximately \$74 million remained for grants. Of this amount, \$16 million is set-aside for projects serving severely disadvantaged communities (SDACs) (Pub. Resource Code, § 80008, subd. (a)(1)).

Proposition 68 included a finding that “Every Californian should have access to clean, safe, and reliable drinking water.” (Pub. Resources Code, § 80001, subd. (a)(13).) The Legislature stated that “[p]eriodic investments are needed to . . . ensure all Californians have safe, clean, and reliable drinking water.” (*Id.*, subd. (a)(20).) Additionally, “The investment of public funds pursuant to this division will result in public benefits that address the most critical statewide needs and priorities for public funding.” (*Id.*, subd. (b)(1).) Finally, the Legislature stated, “In the appropriation and expenditure of funding authorized by this division, priority will be given to projects that . . . produce the greatest public benefit.” (*Id.*, subd. (b)(2).)

Proposition 68 Groundwater Treatment and Remediation Grant Program Guidelines (Prop 68 GW Guidelines) were adopted by the State Water Resources Control Board (State Water Board) on August 20, 2019, to serve as the required project solicitation and evaluation guidelines (Pub. Resources Code, § 80010, subd. (a)) for the State Water Board’s Groundwater Treatment and Remediation Grant Program.¹

After funding two rounds of projects solicited under the original Prop 68 GW Guidelines, approximately \$29.5 million remains uncommitted, of which approximately \$8.5 million is reserved for SDACs. To utilize these remaining funds and to help meet the significant needs of disadvantaged communities (DACs) across California, the State Water Board adopted Resolution No. 2020-0028 on August 18, 2020. Resolution No. 2020-0028 delegated authority to the Deputy Director of the Division of Financial Assistance (DFA) to award these remaining funds to assist DAC drinking water systems that treat groundwater for direct potable use, without necessarily remediating the aquifer.² DFA is proposing to focus funding for such projects on drinking water Operations and Maintenance (O&M) needs³ by implementing the Proposition 68 Groundwater - Drinking

¹ The Treatment and Remediation Grant Program funded cleanup work that includes treatment and reduces contamination in groundwater that serves as a source of drinking water, and/or prevents the migration of contamination to groundwater that serves as a source of drinking water.

² The original Prop 68 GW Guidelines were waived for these projects.

³ Proposition 68 provides that subdivisions (a) and (b) of Government Code section 16727 do not apply to Chapter 11.1; therefore, these bond funds may be utilized for non-capital expenditures, including ongoing O&M of existing facilities (Pub. Resources Code, § 80141, subd. (j)).

Water Treatment Operations and Maintenance Funding Program (Program), which will be implemented consistent with these Proposition 68 Groundwater - Drinking Water Treatment Operations and Maintenance Funding Program Guidelines (Guidelines).

Resolution No. 2020-0028 also delegates authority to the Deputy Director of DFA to utilize any funds remaining unencumbered as of the end of 2022 to extend executed funding agreements for the O&M projects funded according to the original Prop 68 GW Guidelines. This authority may be utilized if funds remain after implementing this Program.

2. AVAILABILITY, ADMINISTRATION, AND IMPLEMENTATION OF FUNDS

The DFA Deputy Director will award funds to one or more Technical Assistance Providers (TA Providers) that can assist multiple eligible DAC water systems. The TA Providers will direct funding toward eligible Projects and will provide assistance as outlined below. Program funds must be encumbered by June 30, 2024, and liquidated (i.e., disbursed) by June 30, 2026. TA Provider and Project selection will be based in part on the ability to meet these respective deadlines. A grant agreement executed with a TA Provider will specify the starting and ending dates for eligible costs.

3. TA PROVIDER RESPONSIBILITIES

TA Providers will be responsible for: performing outreach to potentially eligible water systems; drafting an application for DFA review and approval; assisting potentially eligible water systems with completing funding applications; conducting a review of each application to assess eligibility; collecting necessary certifications and other information from eligible water systems; and disbursing grant funds to eligible water systems.

Work performed by TA Providers within the terms of the grant agreement will be eligible for reimbursement.

4. TA PROVIDER SELECTION PROCESS

One or more TA Providers will be selected to assist eligible water systems with O&M funding. DFA staff will evaluate prospective TA Providers on the basis of the Letters of Interest (LOI) received in response to DFA's [Request for Letters of Interest](#) in 2021. Only LOIs received by the July 12, 2021, deadline will be considered. The LOIs will be reviewed by DFA staff to evaluate whether the prospective TA Provider demonstrates necessary knowledge, experience, and capacity to successfully execute the Program in a timely manner and within budget.

5. PROGRAM REQUIREMENTS AND PRIORITIES⁴

Applications will be evaluated and scored competitively based on the program requirements and priorities identified in this section. In addition to the program priorities set forth in Proposition 68 (see 5.2.1), the State Water Board has established its own eligibility requirements and priorities (see 5.2.2).

5.1 Project Eligibility Requirements

5.1.1 Eligible Grant Recipients

Eligible recipients are public agencies, non-profit organizations, public utilities, federally recognized Indian tribes, California Native American Tribes, and mutual water companies eligible under section 5.1.2. See Appendix A for definitions of these terms.

5.1.2 Eligible Water Systems

Projects must benefit one of the following:

- Community Water System (CWS) with existing groundwater treatment that serves a small DAC with a population of no more than 10,000 people or 3,300 service connections and a median household income (MHI) of less than 80 percent of the statewide MHI. These Small DAC water systems must also have residential water rates equal to or greater than 1.5% of the service area MHI.
- CWS with existing groundwater treatment that serves a small SDAC with a population of no more than 10,000 people or 3,300 service connections and a median household income (MHI) of less than 60 percent of the statewide MHI.
- Public Water System (PWS) with existing groundwater treatment owned by a public school district that serves students in grades kindergarten through twelfth (K-12). To determine the equivalent service connections for a school, the total number of staff and students is divided by 3.3.

5.1.3 Eligible Projects

Program funds will be allocated to eligible water systems to operate and maintain existing treatment systems that treat contamination in groundwater for potable use. See Appendix A for the definition of “contamination.” A

⁴ The DFA will develop a list of water systems that have a high likelihood of meeting the eligibility requirements set forth in these Guidelines. TA Providers will be provided this list to use as a basis for identifying potential eligible water systems and conducting outreach. Water system information will be obtained from the State Water Board’s Drinking Water Needs Assessment, which is updated annually. The DFA may periodically update the list during Program implementation and may provide other guidance to the TA Providers as new information becomes available.

Project shall consist of those activities included in an applicant's request for grant funding, including, but not limited to, permitting, operation and maintenance activities, monitoring, and reporting.

5.2 Funding Prioritization

Funding applications will be evaluated and scored on a competitive basis according to the following:

1. Prioritization criteria identified in Proposition 68, Chapter 11.1 (Pub. Resources Code, § 80141, subd. (b)); and,
2. Projects that benefit small SDACs will be given priority.

5.3 Match Requirements

The funds will go to Projects that benefit DACs and SDACs, and match requirements are waived (See Pub. Resources Code, § 80141, subd. (f)).

6. REQUESTS FOR FUNDING

6.1 Funding Application

Application instructions and forms will be approved by DFA and posted on the TA Providers' webpages. The TA Providers will provide reasonable assistance to applicants with completing applications. At a minimum, applicants will submit the following to the TA Provider:

- a. Water system service area map
- b. Current water service rate and fee schedule
- c. Resolution adopting water service rates and fees
- d. Proof of non-profit status, if applicable
- e. Summary of contaminants of concern
- f. Regulatory directive(s), if applicable
- g. Summary of existing treatment system facilities
- h. Detailed O&M budget for treatment system facilities

The TA Providers shall conduct outreach and provide application assistance to the water systems. The TA Providers shall verify Program eligibility for each applicant.

6.2 Project Approval

TA Providers will review complete applications to confirm compliance with the funding requirements set forth in Section 5.1 and rank eligible Projects according to the funding prioritization criteria established in Section 5.2. Each TA Provider will submit a list of eligible Projects, ranked by funding prioritization, to the DFA for approval prior to notifying water systems of the funding decision. TA Providers will post a summary of approved projects on their Program webpage. Due to the critical and potentially immediate need for this Program funding, any lack of responsiveness by water systems to inquiries and requests for information may result in the DFA rejecting applications or withdrawing grant awards.

7. REIMBURSEMENT OF COSTS

Only work performed within the terms of the funding agreements will be eligible for reimbursement. Advance funds will not be provided.

7.1 Eligible Project Costs

Reimbursable costs that may be disbursed to the eligible water system include actual, reasonable, and necessary O&M costs for eligible Projects, including, but not limited to:

- a. Permitting;
- b. Monitoring and Reporting;
- c. Utility bills;
- d. Chemicals and consumable media;
- e. Replacement or changeout of existing equipment; and
- f. Plant operator labor.

The types of groundwater treatment systems that may qualify for O&M funding include, but are not limited to:

- a. Wellhead treatment;
- b. Extraction and treatment systems; and
- c. Centralized groundwater treatment systems.

The following are not eligible for reimbursement as part of a Project:

- a. Costs incurred prior to July 1, 2022;
- b. Contingency costs;
- c. Indirect costs, overhead costs, or markup;
- d. Costs for capital improvement projects;
- e. Costs to establish a reserve fund;
- f. Costs to pay principal or interest of existing indebtedness; and
- g. Any share of the costs of remediation recovered from parties responsible for the contamination of groundwater (Pub. Resources Code, § 80141, subd. (c)).

7.2 Disputes

An applicant, grantee, or TA Provider may appeal a DFA staff decision within 30 days to the Deputy Director of DFA or designee, for a final DFA decision. An applicant, grantee, or TA Provider may appeal a final DFA decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final DFA decision, this decision will represent a final agency action on the dispute.

Where a grant agreement has been executed, the dispute and remedies provisions of that agreement will control, and the dispute provisions of this section are inapplicable.

8. PUBLIC PURPOSE

Projects proposed by a public utility regulated by the Public Utilities Commission, a mutual water company, or a for-profit entity shall have a clear and definite public purpose and shall benefit the customers of the water system and not the investors. Public utility, mutual water company, and for-profit entities may be required by the DFA to provide information necessary to demonstrate that the customers of the water system receive the benefits of the project through a reduction in rates (or reduced rate increase) commensurate with the grant funding provided; or otherwise demonstrate how the customers and not the investors in the water system benefit from the project. In addition, the DFA or TA Provider may require applicants to conduct any independent, third-party audit necessary to demonstrate that the investors are not benefiting from the grant funding provided in lieu of ratepayers.

APPENDIX A: ABBREVIATIONS AND DEFINITIONS USED IN THESE GUIDELINES

Abbreviations

Chapter 11.1	Chapter 11.1 Groundwater Sustainability of Proposition 68
CWS	Community Water System
DAC	Disadvantaged Community
DFA	Division of Financial Assistance
MCL	Maximum Contaminant Level
MHI	Median Household Income
NAHC	Native American Heritage Commission
O&M	Operation and Maintenance
PWS	Public Water System
SDAC	Severely Disadvantaged Community
State Water Board	State Water Resources Control Board

Definitions

Applicant – means the entity that is formally submitting a grant application. This is the same entity that would receive funds from the TA Provider should the grant application be funded.

Application – the electronic submission to the TA Provider by an Applicant that requests grant funding for a Project.

California Native American Tribe – the term “state Indian tribes” (Wat.Code, § 79712, subd. (a)) means Indigenous Communities of California, which are on the contact list maintained by the NAHC, including those that are federally non-recognized and federally recognized, and those with allotment lands, regardless of whether they own those lands. Additionally, because some water bodies and Tribal boundaries cross state borders, this term may include Indigenous Communities in Oregon, Nevada, and Arizona that are impacted by water in California.

Community – for the purposes of determining eligibility for this grant program, a community is a population of persons residing within the service area of a water system.

Community Water System (CWS) – means a Public Water System that: 1) serves at least 15 service connections used by yearlong residents of the area served by the system, or 2) regularly serves at least twenty-five (25) yearlong residents of the area served by the system.

Contaminant – means any physical, chemical, biological, or radiological substance or matter in water (Health & Saf. Code, § 116275, subd. (a)).

Contamination – includes the Water Code section 13050(k) definition: “Contamination” means an impairment of the quality of the waters of the state by waste or natural causes to a degree which creates a hazard to the public health through poisoning or through the spread of disease. “Contamination” also includes any equivalent effect resulting from the disposal of waste or natural causes, whether or not waters of the state are affected. “Contamination” of an aquifer occurs when a contaminant exceeds a primary maximum contaminant level (MCL) or notification level; or when contaminants, in combination, pose a risk to public health equivalent to exceeding a primary MCL or

notification level. At DFA's sole discretion, "Contamination" may also include MCL exceedances of secondary drinking water standards, such as iron and manganese.

Disadvantaged Community (DAC) – means a community with an annual median household income that is less than eighty (80) percent of the statewide annual median household income (Pub. Resources Code, § 80002, subd. (e)).

Federally Recognized Indian Tribes – means an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.

Groundwater – refers to water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water but does not include water that flows in known and definite channels.

Existing Groundwater Treatment – a groundwater treatment system, such as wellhead treatment, extraction and treatment, or centralized groundwater treatment, that treats contamination in groundwater for potable use.

Median Household Income (MHI) – commonly used to provide data about geographic areas. It divides households into two equal segments, with the first half of households earning less than the MHI, and the other half earning more. For the purposes of determining funding eligibility for this program, the MHI of the water system's entire permitted service area will be used.

Mutual Water Company – means a private corporation or association organized for the purposes of delivering water to its stockholders and members at cost, including use of works for conserving, treating, and reclaiming water (Pub. Util. Code, §§ 2725-2729).

Non-profit Organization – means any non-profit corporation qualified to do business in California and qualified under Section 501(c)(3) of the Internal Revenue Code (Pub. Resources Code, § 80002, subd. (j)).

Project – means those activities included in an applicant's request for grant funding associated with operating and maintaining an existing groundwater treatment system, including, but not limited to, permitting, operation and maintenance activities, monitoring, and reporting.

Proposition 68 – means the "Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018" passed by California voters on June 5, 2018, and as set forth in Division 45 of the Public Resource Code.

Public Agency – means any state agency or department, special district, JPA, city, county, city and county, or other political subdivision of the state (Wat. Code, § 79702, subd. (s)).

Public Utility – means an entity as defined in Public Utilities Code section 216.

Public Water System (PWS) – means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, pursuant to the Safe Drinking Water Act.

Reimbursable Costs – means costs that may be repaid by state grant funds.

Severely Disadvantaged Community (SDAC) – means a community with a median household income of less than sixty (60) percent of the statewide average. (Pub. Resources Code, § 80002, subd. (n)).

Safe Drinking Water Act – means the Federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.), including any amendments thereto.

Small Water System – means a CWS that provides water to no more than 10,000 persons or 3,300 service connections.

TA Provider – An entity selected by the State Water Board to carry out the duties specified in these Guidelines. Duties include, but are not limited to, assisting potentially eligible water systems throughout the application process, collecting information from applicants, evaluation and prioritization of funding applications, and disbursement of grant funds to eligible water systems.